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Real Estate

Zimbabwe

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Wintertons

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2021

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Law and Practice

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1. GENERAL

1.1 Main Sources of Law

The main sources of real estate law are as follows:

- the Constitution of Zimbabwe;
- the Deeds Registries Act (Chapter 20:05);
- the Regional Town and Country Planning Act (Chapter 29:12);
- the Urban Councils Act (Chapter 29:15);
- the Rural District Councils Act (Chapter 29:13); and
- the Environmental Management Act (Chapter 20:27).

1.2 Main Market Trends and Deals

There has been no significant growth in the real estate market over the past year, due to the global pandemic and the consequent government measures that placed the country under lockdown for the greater part of the year. The measures put in place by the government classified the real estate sector as non-essential, so all sector players were not able to operate actively. Transactions were still concluded between buyers and sellers in 2020, but the volume and velocity of these transactions were significantly lower.

1.3 Impact of Disruptive Technologies

Disruptive technologies have not had any noticeable impact as the sector still follows the paper-based way of doing business. This is likely to persist over the next 12 months.

1.4 Proposals for Reform

The current Deeds Registries Act (Chapter 20:05) provides for a paper-based system. There are proposals to reform this legislation through amendments to the Deeds Registries Amendment Act, 2017, which will allow the digitisation of the Deeds Registry and the establishment of an electronic deeds registry to supplement the

current system. This development will have a significant impact on real estate ownership as the deeds registry administration is expedited.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

Property rights that can be acquired can be put into two categories: real rights and personal rights. A real right is deemed the highest form of ownership in that it gives the right holder complete dominion over the real estate. Such right is acquired upon registration and transfer of title in terms of the Deed Registries Act (Chapter 20:05). Personal rights are contractual and are enforceable between the parties involved.

2.2 Laws Applicable to Transfer of Title

Transfer of title is governed by the Deeds Registries Act (Chapter 20:05), which applies to all types of real estate.

2.3 Effecting Lawful and Proper Transfer of Title

Transfer of title is carried out by a registered conveyancer. The documents required for transfer to be initiated include the buyer's and seller's identity documents, if these are natural persons. Where either party is a juristic person, the proof of registration of the company will be required. The original title deed is required. The conveyancer will attend to the drafting of all other documentation, such as the deed of transfer, a power of attorney to pass transfer, declarations by both buyer and seller, and resolutions.

The conveyancer's task is to ensure compliance with the tax requirements imposed by several tax statutes and enforced by the Zimbabwe Revenue Authority (ZIMRA) and the Registrar of Deeds. These taxes are capital gains tax and stamp duty, respectively. The conveyancer must also ensure that all debts due to the local author-

ity are settled prior to transfer. Various certificates are issued once these steps are complied with.

Upon receipt of the deed of transfer, the officer checks for compliance with the provisions of the Deeds Registries Act (Chapter 20:05) and the applicable tax statutes. If the deed of transfer passes the compliance test, the Registrar shall proceed to register the deed.

Title insurance is not provided for in Zimbabwe's governing legislation.

2.4 Real Estate Due Diligence

Real estate due diligence involves the participation of various offices – mainly the Deeds Registry office, the High Court, the office of the Master of the High Court, City of Harare, and the Surveyor General's Office.

The Deeds Registry office is usually the first port of call, where the objective is to verify the seller's title. This will involve ascertaining the existence of any encumbrances, caveats, conditions and securities that may be endorsed on the title deed. The Registrar of the High Court will provide information relating to all pending and finalised litigation. It is imperative for the buyer to check whether or not there is any litigation, either pending or finalised, relating to the property he intends to purchase, and also relating to the seller.

If the property falls within a deceased estate, valid transfer can only be carried out in consultation with the Master of High Court and the appointed executor/executrix dative. In certain instances, the Master's consent is required for a property to be transferred.

There have been no notable changes to the real estate due diligence process in the past year due to the COVID-19 pandemic. Having been

classified as non-essential during the lockdown period, the real estate sector saw reduced activity when the country was on stringent lockdown, which characterised the past 12 months.

2.5 Typical Representations and Warranties

Sellers may give warranties and representations, which are generally reduced into writing and contained in the agreement of sale. They are not regulated by any statute. Typically, warranties will address the condition of the property, such as the suitability of the property for its use, the absence of any defects, etc. Other warranties may be given that the property is free from encumbrances and not subject to any litigation. If the seller misrepresents, the buyer finds recourse under contract law, and may claim for damages for breach of contract.

2.6 Important Areas of Law for Investors

The most important areas of law for an investor to consider when purchasing real estate are as follows:

- the Deeds Registries Act (Chapter 20:05), which will inform the investor upon the transfer of ownership;
- the Regional Town and Country Planning Act (Chapter 29:12), which will inform the investor of matters pertaining to planning, zoning and permits with which the real estate development should conform;
- the Environmental Management Act (Chapter 20:27), which will inform the investor of the need for an Environmental Impact Assessment Report prior to commencing a development; and
- the Finance Act (Chapter 23:04), the Stamp Duties Act (Chapter 23:01) and the Capital Gains Tax Act (Chapter 23:01), which will inform the investor of the various taxes that

are applicable when acquiring or disposing of property.

2.7 Soil Pollution or Environmental Contamination

Under the Environmental Management Act (Chapter 20:27), liability for pollution or contamination generally attaches to the one in occupation. It follows that, if the buyer was not responsible for the pollution or contamination, they have the right to sue the seller, under civil law, for damages suffered.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

In order to ascertain the permitted uses of a parcel of real estate, one has to review master plans for the relevant region, town or council, made under the Regional Town and Country Planning Act (Chapter 27:06). Section 14 of the Act states that a local authority shall draw a master plan in respect of the area for which it is the local planning authority or for such part of that area as the Minister of Local Government may specify.

The master plan will contain policies of that authority and its general proposals for the planning area in respect of the co-ordinated and harmonious development or redevelopment and other uses of land, including measures for regulation of the use of land and buildings thereon, economic development, conservation and improvement of the physical environment, as well as the movement of traffic and the closure or diversion of roads.

Under section 209 of the Urban Councils Act (Chapter 29:15), a local authority may enter into contracts for any purpose authorised by law, and may require and take security from any person for the due performance of their obligations. Section 79 of the Rural District Councils Act (Chapter 29:13) gives Rural District Councils similar powers. The difference between Rural

District Councils and Urban Councils is that the former is in charge of non-urban areas, which include growth points and townships.

Local authorities are listed as procuring entities in terms of the Public Procurement and Disposal of Public Assets Act (Chapter 22:23). The procuring of construction work, goods and services is therefore regulated by that Act. The Act further provides for the control and regulation of public procurement and the disposal of public assets so as to ensure that such procurement and disposal are done in a manner that is transparent, fair, honest, cost-effective and competitive.

It follows that there is no right to automatically engage council. Interested parties should bid upon invitation to do so. The Minister of Finance and Economic Development is empowered under the Public Procurement and Disposal of Public Assets Act to make regulations stipulating the capital thresholds that local authorities can handle through their procurement departments. In respect of Urban Councils, the procurement departments are established in terms of section 210 of the Urban Councils Act (Chapter 29:15). For Rural District Councils, a procurement department is established under section 79 of the Rural District Councils Act (Chapter 29:13).

For amounts that exceed the stated internal thresholds, the procurement process is handled by the Procurement Regulatory Authority of Zimbabwe, which is established under the Procurement and Disposal of Public Assets Act (Chapter 22:23).

2.9 Condemnation, Expropriation or Compulsory Purchase

Sections 71 and 72 of the Constitution classify land as agricultural, non-agricultural or communal. Different rules apply in an expropriation or compulsory purchase of any of these categories of land.

Agricultural land may be compulsorily acquired, or any right or interest in that land, if it is required for public purpose. “Public purpose” refers to:

- acquisition for settlement for agricultural or other purposes;
- land reorganisation, forestry, environmental conservation or the utilisation of wildlife or other natural resources; or
- the relocation of persons dispossessed for the reasons above.

There is no compensation under this category.

Non-agricultural land (urban council/township land) may be compulsorily acquired if it is in the interests of defence, public safety, public order, public morality, public health or town and country planning, or in order to develop or use that or any other property for a purpose that is beneficial to the community. The acquiring authority is supposed to give notice. If the acquisition is contested, the acquiring authority should apply to a competent court, no later than 30 days after the acquisition. The court’s determination will signal the way forward. The persons dispossessed have a right to compensation and may approach a court of law for that cause.

In section 10 of the Communal Lands Act (Chapter 20:04), the Minister of Local Government may set aside land contained within communal land for the establishment of a township, village, business centre or industrial area, or an irrigation scheme. The other category within which land may be set aside is for any developmental purpose that benefits the inhabitants and the community.

Before any land is set aside, the Minister shall publish a statutory instrument that describes the land concerned, specifying the purpose for which the land has been set aside and the date with effect from which the land concerned will

be set aside. This should be accompanied by a concomitant order advising all persons occupying or using the land concerned to depart permanently with all their belongings within a reasonable period of time. The only exception is for those who are occupying or using the land under the Mines and Minerals Act (Chapter 21:05).

Under section 13 of the Communal Lands Act (Chapter 20:04), occupants affected by way of dispossession have a right to be given alternative land or be compensated.

2.10 Taxes Applicable to a Transaction

Taxes applicable in a transaction for the purchase and sale of real estate are stamp duty, capital gains tax and intermediated money transfer tax. Only the capital gains tax applies to sales through share deals.

Further costs include estate agent commission, which is prescribed at 5% of the value of the property being sold but may be varied by agreement. The transaction is also susceptible to a conveyancing fee, which is currently 3% of the value of the property or the purchase price, whichever is greater. The conveyancing fees are in terms of the Law Society of Zimbabwe (Conveyancing Fees) By-laws S.I 28 of 2020.

2.11 Legal Restrictions on Foreign Investors

There are no legal restrictions on foreign investors acquiring real estate.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

The main source of financing for acquisitions of commercial real estate capital is through secured loans offered by banking institutions. There are no different financing options for acquisitions of

large real estate portfolios or companies holding real estate.

3.2 Typical Security Created by Commercial Investors

For the purpose of acquiring or developing real estate, investors will typically enter into the following security agreements:

- mortgage bonds, which are registered over an immovable property;
- notarial bonds, which are registered over movable property; and
- suretyship agreements, which are entered into by the lender and the directors/shareholders (if a company is involved) or other third parties.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

There are restrictions on granting security over real estate to foreign lenders.

Section 11 of the Exchange Control Regulations, 1996 published under Statutory Instrument 109 of 1996 proscribes the incurring of foreign obligations by Zimbabweans without approval from the Reserve Bank of Zimbabwe. Furthermore, section 12 of the same Regulations states that, unless otherwise authorised by an exchange control authority, no person shall issue any security that is registered in Zimbabwe to a foreign resident or nominee of a foreign resident.

Section 11 of the Exchange Control Regulations states that the prior approval of the Reserve Bank of Zimbabwe is required to make repayments to a foreign lender when settling foreign obligations.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

There are no taxes relating to the granting and enforcement of security. There are, however,

registration fees payable to the conveyancer responsible for the preparation of the security documents, which in terms of Law Society of Zimbabwe (Conveyancing Fees) By-laws, 2020 is 2.5% of the amount of the debt secured by the bond. A nominal fee is also payable at the Registry for registrations of mortgage bonds, which is currently pegged at ZWL5,000.

3.5 Legal Requirements Before an Entity Can Give Valid Security

In addition to the provisions of the Exchange Control Regulations as discussed in **3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders**, Section 23 of the Companies and Other Business Entities Act (Chapter 24:31) provides that it is illegal for a company to directly or indirectly give loans or guarantee the provision of security for the purchase of a company's own shares or those of its subsidiaries. This is only subject to a special board resolution, after which a valuation of the company assets should be carried out. Section 208 of the same Act also provides that it is illegal for a company to render financial assistance to its directors.

The exceptions are when there is a need to indemnify directors in the course of their duties, although this is subject to certain minimum conditions, which are also found in the Act. The financial assistance must ordinarily be approved during a general meeting or, without such approval, the loan or obligation should be discharged within six months of the conclusion of that meeting.

Further exceptions include companies whose ordinary business involves lending money or giving guarantees, and private companies that are not subsidiary companies where the financial assistance has been acceded to by members holding at least 90% of the issued share capital.

The exceptions also extend to situations covered under section 123 of the Companies and Other Business Entities Act (Chapter 24:31), as explained above.

In terms of the corporate benefit rules, directors are supposed to act in good faith in respect of company matters.

3.6 Formalities When a Borrower Is in Default

When a borrower is in default, the lender will place the debtor in mora by way of a written demand specifying the extent of the breach, the need to redress said breach within a specified time period and the intended action in the event of default.

If the borrower fails to comply, the lender will approach the court for an order declaring the property especially executable. A lender is only able to enforce the security against a defaulting borrower through an Order of the Court. This process may be seen as an obstacle in that the lender would have to endure protracted and sometimes costly litigation before recovering.

3.7 Subordinating Existing Debt to Newly Created Debt

Subordinating existing debt to newly created debt depends on the agreement between the parties.

3.8 Lenders' Liability under Environmental Laws

Liability does not arise in respect of a lender enforcing security over real estate. The Environmental Management Act (Chapter 20:27) places liability on occupation, although it should be noted that pollution issues do not arise during the sale of real estate. Liability could rest with the resultant buyer.

3.9 Effects of a Borrower Becoming Insolvent

Security interests do not become void when a borrower becomes insolvent; they are still enforceable in accordance with the principles of insolvency law, as regulated by the Insolvency Act (Chapter 6:04). These are treated as secured claims and the lender is prioritised ahead of other creditors.

3.10 Consequences of LIBOR Index Expiry

The key consequences include transitional uncertainty. A lot of transactions were indexed to LIBOR and it remains uncertain if the same values will be retained. It is therefore necessary to vary the agreements and agree on transitional modalities that will ensure that borrowers are not prejudiced.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

Planning and zoning are effected through approved schemes and regional, master and local plans made in terms of the Regional, Town and Country Planning Act, the Urban Councils Act (Chapter 29:15) and the Rural District Councils Act (Chapter 29:13).

The totality of these laws ensures that the conditions of the establishment of any development at whatever level are properly observed. Mechanisms are in place to ensure that construction is subject to the approval of plans. There are also provisions for oversight during the construction, including inspections and the testing of building materials.

The responsible authorities further maintain control on the structure of the buildings by requir-

ing changes or alterations to buildings, to be effected with approval. Local authorities are also empowered to demolish structures that do not conform with the local plans and schemes – eg, buildings that are built on undesignated areas such as wet lands or sewer lines.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

Legislative and governmental controls applicable to design and appearance are found in By-Laws made in terms of the Urban Councils Act (Chapter 29:15) and the Rural District Councils Act (Chapter 29:13), respectively. The statutes allow the local authorities to regulate the nature, design, appearance, height, ventilation, area, lighting and cubic content of buildings in their areas of authority. Refurbishment of an existing building is generally treated as a new project for the purposes of obtaining approval.

Construction methods are largely regulated by the environmental laws contained in the Environmental Management Act [(Chapter 20:27) and some environmental aspects found in the Urban Councils Act (Chapter 29:15) and the Rural District Councils Act (Chapter 29:13).

4.3 Regulatory Authorities

The Urban and Rural District Councils are responsible for regulating the development and designated use of individual parcels of real estate, as the custodians of land under their authority. These bodies are responsible for all compliance issues, ranging from regulating development to the designated use of individual parcels of real estate.

4.4 Obtaining Entitlements to Develop a New Project

Requirements to obtain entitlement to develop a new project include the following.

- An Environmental Impact Assessment (EIA) certificate issued pursuant to section 100 of the Environmental Management Act is necessary for housing and industrial developments; if successful, the certificate is valid for two years.
- Construction plans should be approved by the local authority. At this stage, the local authority checks compliance with the master plans drawn in terms of the Regional Town and Country Planning Act and the model building By-laws. The application must be accompanied by a set of plans for the structure, the building permit application and the application for inspection.
- The Inspector must perform inspections on various stages, including the completion of the building's foundation, the completion of drainage installation and the completion of the structure.

It appears that third parties have no input in respect of the approval building structures. The process is meant to enforce the master plans, which third parties have input on by operation of sections 15 and 16 of the Regional, Town and Country Planning Act.

Under section 101 (3) of the Environmental Management Act, the Director of the Environmental Management Authority has discretion to consult the community to which the project relates. Third parties may challenge the decision of the Director General under the Administration of Justice Act (Chapter 10:28) on account that the decision is unlawful, unreasonable and procedurally unfair.

4.5 Right of Appeal Against an Authority's Decision

In respect of developments in urban areas, the right to appeal against the authority's decision on conditions of title is provided under section 199 (3) (b) of the Urban Councils Act (Chapter

29:15). The aggrieved landowner is given 28 days within which to appeal to the Administrative Court. The equivalent of this provision under the Rural District Councils Act (Chapter 29:13) is section 79 (3) (b).

4.6 Agreements with Local or Governmental Authorities

Generally, it is possible to enter into an agreement with a local authority for the purposes of development, albeit subject to the parameters explained in **2.8 Permitted Uses of Real Estate under Zoning or Planning Law**. The nature of development is also subject to the provisions of the Regional, Town and Country Planning Act, read together with applicable local authority statutes – either the Urban Councils Act (Chapter 29:15) or the Rural District Councils Act (Chapter 29:13).

4.7 Enforcement of Restrictions on Development and Designated Use

Depending on the case in hand, methods of enforcement include the demolition of offending buildings and structures, and the prohibition of use of any building or land that contravenes local authority conditions. These measures are sanctioned in terms of section 199 (1) of the Urban Councils Act (Chapter 29:15) and section 79 (1) of the Rural District Councils Act (Chapter 29:13).

Before implementing any of the measures, the local authority shall serve a notice on the offending party, indicating the nature of the action proposed and the grounds upon which it proposes to take that action.

In relation to environmental matters, section 104 of the Environmental Management Act empowers the Director-General of the Environmental Management Authority to suspend or cancel a certificate if, on the basis of new evidence or any report by the developer, it is proven that the

project is likely to be a source of pollution or may otherwise pose a threat to the environment.

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

The following entities are available to investors to hold real estate assets:

- common law universitas – these are organisations with constitutions and include churches;
- limited liability companies incorporated in Zimbabwe;
- trusts (including real estate investment trusts/ listed property trusts); and
- corporate bodies created by statute.

5.2 Main Features of the Constitution of Each Type of Entity

Common law universitas: the main feature of a universitas is the availability of a constitution with perpetual succession. The constitution should include the capacity to acquire rights and obligations, and the right to hold property in its name.

Limited liability companies: these are created and incorporated pursuant to the Companies and Other Business Entities Act (Chapter 24:13). The shareholding and objects of the company are contained in the Memorandum and Articles of Association. A company is considered a juristic person, and is able to own assets in its own right.

Trusts: a settlor may transfer or donate immovable property for use or enjoyment of fruits by the beneficiaries nominated by the settlor.

Corporate bodies created by statute: statute may endow an entity/board with legal personality. This is the case for the Environmental Man-

agement Board (which is given corporate personality), National Employment Councils (which are designated as such in terms of the Labour Act (Chapter 28:01)) and universities (which are designated in terms of their enabling statutes). That status carries with it an ability to own real estate.

5.3 Minimum Capital Requirement

Common law universitas: no capital is required, except for fees to draft the Constitution. If drafted by a legal practitioner, the rates are determined and provided for in terms of the Law Society of Zimbabwe Tariff applicable at the time.

Limited liability companies: no capital is required, but a nominal fee is required for the lodging of company documents for processing at the Registrar of Company Offices. If the company has enlisted the services of a professional in drafting the documents, the fees will be determined by any applicable tariff, or will be as agreed between parties.

Trust: no capital is required, but a nominal fee is required for the lodging of company documents for processing at the Deeds Registry Offices. Fees for the notary public, who would have drafted the deed, are determined by the Law Society of Zimbabwe tariff applicable at the time.

Any other entity designated by statute: no capital is required – the mere designation by the enabling statute suffices.

5.4 Applicable Governance Requirements

The governance requirements for each type of entity are as follows:

- common law universitas – a constitution with the name of the universitas, objectives, membership charter, rights and obligations;

- limited liability companies – the company's name and physical and postal address, the director's information, shareholders' information and the memorandum and articles of association, which contain the company's governance structure and core business activities;
- trust – a deed of trust that embodies the name of the trust, the names of the settlor and trustees, and an agreement between the settlor and the trustees. A trust must also have continuous funding; and
- any other entity designated by statute – mere designation by statute suffices.

5.5 Annual Entity Maintenance and Accounting Compliance

Generally, there are no maintenance costs. For limited liability companies, a nominal fee is required for the lodging of annual returns. In respect of accounts, audit fees are determined by the respective auditors.

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Arrangements allowing the use of real estate for a limited period of time are in the form of lease agreements. There are two types of leases: residential and commercial. These may be on a short term or on a long term, and may include a further right to sub-lease.

Short-term leases are defined in section 2 of the Deeds Registration Act (Chapter 20:05) as a lease agreement meant to subsist for a period of not more than ten years, whilst lease agreements of ten years or more qualify as long-term leases. The latter category is registrable pursuant to section 65 of the Deed Registration Act (Chapter 20:05) by way of a notarial deed executed by

the lessor or lessee in the case of a sub-lease. A person intending to register a mortgage on a property that is subject to a registered lease must obtain the consent of the lessee.

6.2 Types of Commercial Leases

There are no different types of commercial leases.

6.3 Regulation of Rents or Lease Terms

Rents and lease terms are freely negotiable. In response to the pandemic and concomitant lockdown, the government enacted Statutory Instrument 96 of 2020 Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020, which were promulgated on 29 April 2020 and have since lapsed. In material terms, the Regulations provided the following:

- for the duration of the lockdown, a person occupying rented accommodation for residential purposes was granted a deferral to pay rent; and
- said person shall not be subjected to any legal proceedings for the eviction or ejection from the land or premises.

6.4 Typical Terms of a Lease

A commercial lease is contractual and must specify the duration of the lease, the rent payable and the date on which it is due and payable. Other terms include the breach clause and terms for renewal.

A typical lease agreement also includes a clause on maintenance and repairs.

Repairs are generally the responsibility of the real estate owner, with most lease agreements providing that the real estate owner is responsible for structural repairs. The rent payable usually factors in the likely cost of maintenance and repair work.

A lease agreement will also include rent review options. Rent can be paid weekly, monthly, quarterly and even annually.

Force majeure clauses are usually included and defined. During the COVID-19 pandemic period and concomitant lockdowns, rents remained due and payable. Rent payments in respect of residential real estate were briefly deferred through Statutory Instrument 96 of 2020 Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020.

6.5 Rent Variation

Lease agreements will typically have a clause that addresses rent reviews. Due to the volatility of the economic situation, rentals are increased as often as agreed between parties, but usually biannually or quarterly.

6.6 Determination of New Rent

Rental increments usually require the consent of both parties. In the event of disagreement, the lessor has the option to apply to the Rent Board under section 7 of the Commercial Premises (Rent) Regulations, 1983 published under Statutory Instrument 656/1983 for a fair rent determination for commercial leases. In respect of a residential lease, the lessor may apply to the rent board in terms of section 14 of the Rent Regulations, 2007, published as Statutory Instrument 32 of 2007.

6.7 Payment of VAT

VAT is only payable on commercial leases. It is not levied on residential leases.

6.8 Costs Payable by a Tenant at the Start of a Lease

A tenant may be asked to pay a deposit in the sum equivalent to a month's rent, upon signing the lease agreement.

6.9 Payment of Maintenance and Repair

The maintenance and repair of communal spaces are the responsibility of all tenants. In addition to rent, tenants may be required to pay additional levies, which will be put towards the maintenance of common areas. This is often the case in cluster developments, flats and gated communities.

6.10 Payment of Utilities and Telecommunications

Usually, the simplest method is to include a fixed sum in the rent, which will go towards the payment of utilities. In other instances, the real estate owner may use the floor space occupied by a tenant, over the total square meterage of the entire building, to calculate the tenant's contribution.

6.11 Insuring the Real Estate That Is Subject to the Lease

The real estate owner is responsible for insuring the real estate. The insurance typically covers natural disasters, such as hail, fire, rain, or wind storms. The owner of the real estate may choose to insure against theft. Any risk attributed to the negligence of the real estate owner may result in the forfeiting of the owner's right to claim from the insurance company.

6.12 Restrictions on the Use of Real Estate

The real estate owner may impose restrictions on the use of the real estate. In some instances, the lease may preclude the keeping of pets of any kind. Some leases will prohibit significant alterations to the interior of the buildings, such as the flooring or walls. In a communal/complex set-up, some restrictions may limit the number of visitors allowed on the premises, and times when visitors will be permitted. In both commercial and residential leases, a lessee may be precluded from sub-leasing the premises.

The lessor may also restrict changes in the scope and purpose of the lease agreement, such as restricting the lessee from conducting business other than what was agreed upon or incidental to that agreed upon in respect of commercial leases. There are also restrictions that are implied by operation of the law in both cases. This includes the law against causing nuisance to the neighbours and turning a dwelling into a brothel, which are regulated by sections 46 and 82 of the Criminal Law (Codification and Reform) Act (Chapter 09:23), respectively.

6.13 Tenant's Ability to Alter and Improve Real Estate

Clauses that deal with improvements are provided for in lease agreements. Usually, improvements are made subject to the owner's written consent. In the absence of a lease agreement, where improvements have been effected, a tenant will be entitled to necessary or useful improvements.

6.14 Specific Regulations

Commercial leases are regulated under the Commercial Premises (Rent) Regulations, 1983 and the Commercial Premises (Lease Control) Act, 1983, while residential leases are regulated under the Rent Regulations, 2007.

6.15 Effect of the Tenant's Insolvency

The tenant's insolvency usually terminates the agreement on account of the tenant being unable to meet its obligation to pay rent. The real estate owner reserves the right to lodge a claim in respect of outstanding rent in terms of the Insolvency Act.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

Various forms of security are available to a real estate owner as a means of safeguarding against the non-payment of rent. A tenant may pledge

their property as collateral, which can be transferred to the real estate owner upon default or disposed of to satisfy the debt arising. Another option at the disposal of the real estate owner is to subject a tenant to a lien, which is generally a right of retention exercised by a creditor.

Under section 34 of the Magistrates Court Act (Chapter 07:10), a real estate owner may apply to the Magistrates Court in the province where the real estate is located if the tenant has failed to pay rent for seven days or more after the demand is made, or if the tenant is about to remove his movable properties in order to defeat the payment of rent and other obligations. In the absence of security that satisfies the debt, the Court may order the Messenger of Court to seize and arrest the movable property in or upon the house, land or premises in question in order to satisfy the amount of rent due and in arrears, together with the costs of the application to the court.

The real estate owner may sue for outstanding rent. If the action is successful, the real estate owner may execute the action through the general forms of executing court judgments, such as the attachment of movable and immovable property, civil imprisonment and garnishee orders where the tenant is employed. Recovery is also possible against a surety, where one is involved.

6.17 Right to Occupy after Termination or Expiry of a Lease

Upon the expiration of the lease, a tenant is expected to vacate the leased premises. If they do not do so, the real estate owner has the right to institute eviction proceedings against the tenant.

There are exceptions, including in the case of a statutory tenant. A statutory tenant is defined as a tenant whose continued occupation of the premises after the expiry of the lease agreement

is by operation of the law. Statutory tenancy is governed by section 22(2) of the Commercial Premises (Rent) Regulations, 1983 published under Statutory Instrument 676 of 1983. The regulations provide that there shall be no order for eviction as long as the lessee continues to pay the rent due within seven days of the due date, and meets the other conditions of the lease. The exception is when the lessor proffers convincing grounds other than that the lessee is not agreeable to a rent increase and that the lessor intends to lease the premises to some other person.

Equally applicable is the common law principle of tacit relocation, which also extends to non-commercial premises. Tacit relocation is an implied agreement to extend the lease agreement beyond the termination date if the lessor has remained in occupation beyond the termination date. The implied extension will be on the same terms as the previous lease agreement.

6.18 Right to Assign a Leasehold Interest

Assigning a leasehold interest is permitted if it is agreed between the parties. The conditions are usually similar to those that apply to the principal agreement.

6.19 Right to Terminate a Lease

A lease agreement may be terminated by either party giving three months' notice to the other. The most common event that may give rise to termination is non-payment of rent. Generally, a failure by either party to honour the obligations and responsibilities imposed on them by the terms of the agreement will result in termination.

6.20 Registration Requirements

The Deeds Registries Act distinguishes between short-term and long-term leases. Section 65 requires the registration of long-term leases by way of executing a notarial deed of lease pre-

pared by a registered Notary Public. The official fees payable to the Registrar for registration are currently ZWL2,000.

6.21 Forced Eviction

A tenant can be evicted from the leased premises in the event of default. A court order will need to be sought by the real estate owner. Many variables influence the litigation process, which can take anything from three to 12 months, depending largely on the attitude of the tenant.

6.22 Termination by a Third Party

Lease agreements that are premised on an illegality can be terminated by a municipal authority. There is no provision for compensation in such instances.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

There is no statute that regulates the pricing of construction costs. Construction pricing is largely agreed between the parties.

7.2 Assigning Responsibility for the Design and Construction of a Project

The different methods used for assigning responsibility for the design and construction are as follows:

- design and build – the same contractor designs the project and is responsible for its implementation;
- design only – a contractor simply designs for onward implementation by another contractor; and
- build only – the design is implemented by a different contractor from the one who designed it.

7.3 Management of Construction Risk

The devices used to manage construction risk on a project include the following:

- the most prevalent way of managing construction risk is through warranties, which become enforceable upon breach. With a warranty, the contractor undertakes to build a structure that is fit for the intended purpose;
- risk-based project evaluation method – payments due to the contractor are subject to the project passing the relevant stages agreed by the parties;
- indemnity – one party agrees to pay for potential losses or damages caused by another party; and
- satisfaction guarantees – the contractor guarantees the owner that the money paid will be refunded if they are not happy.

7.4 Management of Schedule-Related Risk

Construction agreements will typically include the period within which the project should be completed. If the contractor fails or is prevented from meeting the set deadline, parties may agree on an extension. Where there is no period agreed on, the project should be complete within a reasonable time. If the delay is attributed to the contractor, this amounts to a breach of the agreement. The owner may terminate the agreement and concomitantly sue for damages.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

It is common for owners to seek additional forms of security to guarantee a contractor's performance on a project through letters of credit, parent guarantees, performance bonds, escrow accounts and third-party sureties.

7.6 Liens or Encumbrances in the Event of Non-payment

Generally, contractors or designers are not permitted to lien or otherwise encumber a property. In practice, a contractor may sue the owner in terms of the contract.

7.7 Requirements Before Use or Inhabitation

After construction is complete, the law states that a certificate of occupancy must be issued by the relevant local authority.

8. TAX

8.1 VAT

Value-added tax is not payable on the sale or purchase of corporate real estate; it applies only to conveyancing fees and estate agent commission.

8.2 Mitigation of Tax Liability

There are no methods commonly used to mitigate transfer, recordation, stamp or other similar tax liability on acquisitions of large real estate portfolios.

8.3 Municipal Taxes

Municipal taxes such as rates and levies are payable monthly from the date of occupation.

8.4 Income Tax Withholding for Foreign Investors

There is no withholding of taxes for foreign investors.

8.5 Tax Benefits

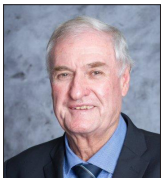
There are no tax benefits from owning real estate.

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Wintertons provides a full array of legal services from offices conveniently located within a two-block radius of the High Court, the Supreme Court and the Constitutional Court of Zimbabwe. The firm is committed to delivering the highest-quality legal services to clients, and understands the importance of accurately interpreting clients' needs and delivering quick and reliable solutions. Wintertons' real estate team handles all related matters, from dealing with every aspect of the disposal of real estate assets to structuring and negotiating a full range of real estate operations, including forward funding contracts, turn-key sale and leasebacks, real estate due diligence, the structuring of real estate company groups, real estate investment funds and operations involving institutional in-

vestors, conveyancing and transfers, mortgage bond registration and deregistration, the consolidation and division of land, the replacement of lost title deeds, landlord and tenant contracts and disputes, advice on capital gains tax exemptions and roll-overs, and housing developments. The real estate lawyers are highly experienced in negotiating all types of real estate contracts relating to rights of use of real estate assets, and also provide legal support in a wide variety of planning and land registry matters, including the subdivision of land and buildings, land consolidation and severance and horizontal property issues. In general terms, the team handles all issues relating to the establishment and registration of rights of ownership and other rights over real property.

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Peter Moor is the senior partner of the firm and is a conveyancing specialist and head of the Property and Estate Department. He is one of the leading conveyancers for the

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